

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DEBRA K. KIEFER)	
Claimant)	
VS.)	
)	Docket No. 1,030,509
EDGE OF TOWN)	
Respondent)	
AND)	
)	
FARMERS INSURANCE EXCHANGE)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the April 6, 2007, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes. Gary K. Albin of Wichita, Kansas, appeared for claimant. Clifford K. Stubbs of Roeland Park, Kansas, appeared for respondent and its insurance carrier.

The record on this appeal is the same record as that considered by Judge Barnes and includes the transcript of the October 12, 2006, Preliminary Hearing with Claimant's Exhibits 1 through 3 and Respondent's Exhibits 1 and 2; the transcript of the December 6, 2006, deposition of LaVerna Chaney; the transcript of the December 6, 2006, deposition of Patricia Johnson, and the pleadings contained in the administrative file.

ISSUES

Claimant alleges she injured her back on July 11, 2006, while working for respondent. In the April 6, 2007, preliminary hearing Order, Judge Barnes granted claimant's request for workers compensation benefits.

Respondent and its insurance carrier contend Judge Barnes erred. They argue claimant failed to prove she injured her back at work on July 11, 2006, because that is contradicted by her medical records. They also contend claimant failed to provide respondent with timely notice of the accident because respondent did not receive notice of the accident or injury until August 8, 2006. Consequently, respondent and its insurance carrier request the Board to reverse the April 6, 2007, Order and deny this claim for compensation.

Conversely, claimant contends the Order should be affirmed. Claimant argues her medical records corroborate an onset of back complaints from a July 2006 work-related injury. She also argues respondent has failed to present any evidence to suggest any mechanism of injury other than helping put away 50-pound boxes of potatoes in respondent's kitchen. Regarding notice, claimant contends she timely notified respondent's restaurant manager Kay Church about injuring her back at work, as well as lead cook LaVerna Chaney and grill cook Pattie Johnson. Claimant argues both Ms. Chaney and Ms. Johnson supervise claimant's work as a prep cook. In short, claimant contends she notified all three of those individuals of her back injury within 10 days of the accident.

The issues before the Board on this appeal are:

1. Did claimant injure her back at work in an accident that arose out of and in the course of her employment with respondent?
2. If so, did claimant timely notify respondent of her accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds and concludes the April 6, 2007, preliminary hearing Order should be affirmed.

In March 2006, claimant began working as a prep cook for respondent, which operates a restaurant at the edge of El Dorado, Kansas. The restaurant was managed by Kay Church. Nonetheless, three other cooks with more seniority, LaVerna Chaney, Patricia Johnson, and Karen [Rocky] Pence, instructed claimant what to do in Ms. Church's absence.

Claimant's testimony regarding hurting her back at work lifting potatoes is credible. On July 11, 2006, claimant injured her back at work while putting away potatoes following a delivery. Claimant described the late-morning accident and the act of notifying Ms. Church of the accident, as follows:

I was throwing potatoes on a table. And we had four [50-pound] boxes, and I had to take the ones off the table and put on the floor because we rotate, and the other one was slightly a little bit over my head so when I went to jerk and push it up, my lower back started really hurting, and I sat down in the break room quite a bit the rest of the day. You know, I got through the [lunch] rush, and then I kind of lingered around. Well, I thought I could work it out; I didn't really think I hurt it that bad. Well, it kept getting a little bit worse and a little bit worse, and I seen Kay after a

rush [sometime during the next week] when I went to go fix me something to drink and she asked me if I was going to be okay, and I said I didn't know. And I told her that I hurt it when I was putting the truck away.¹

After initially injuring her back, claimant's symptoms worsened to the point that on July 25, 2006, she sought medical treatment at a hospital emergency room. Claimant advised the emergency room personnel she had injured her back at work two weeks earlier "putting away truck."² On July 27, 2006, claimant sought medical treatment at the Hunter Health Clinic, where she has obtained treatment over the years.

Within days of the July 11, 2006, incident, claimant also told Ms. Chaney, Ms. Johnson, and Ms. Pence about hurting her back at work.

The undersigned acknowledges Ms. Church believes she did not receive notice from claimant of a work-related accident until August 8, 2006. At this juncture, however, the undersigned finds claimant's testimony credible that she told Ms. Church the week following the accident about hurting her back putting away produce. As noted above, claimant did not try to conceal her back injury as within days of the lifting incident she advised several co-workers about hurting her back at work.

Considering the entire record, the undersigned finds claimant injured her back on or about July 11, 2006, while working for respondent. That accident arose out of and in the course of her employment with respondent. Finally, it is more probably true than not that claimant provided respondent with timely notice of the accident as notice was provided within 10 days of the incident, as required by K.S.A. 44-520. At this juncture it is not necessary to address whether notice to the other cooks constituted notice to respondent. Accordingly, the April 6, 2007, preliminary hearing Order should be affirmed.

By statute, these preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the April 6, 2007, Order entered by Judge Barnes is affirmed.

¹ P.H. Trans. at 11, 12.

² *Id.* at 23.

³ K.S.A. 44-534a.

IT IS SO ORDERED.

Dated this ____ day of June, 2007.

BOARD MEMBER

c: Gary K. Albin, Attorney for Claimant
Clifford K. Stubbs, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge